

AGENDA

SAN BRUNO COMMUNITY FOUNDATION

Special Meeting of the Board of Directors

November 22, 2014
10:00 a.m.

Meeting Location: City Hall, Conference Room 115, 567 El Camino Real, San Bruno

In compliance with the Americans with Disabilities Act, individuals requiring reasonable accommodations or appropriate alternative formats for notices, agendas, and records for this meeting should notify us 48 hours prior to meeting. Please call the City Clerk's Office 650-616-7058.

1. Call to Order

2. Roll Call

3. Approval of Minutes: October 16, 2014, Regular Board Meeting

4. Public Comment: Individuals are allowed three minutes, groups in attendance, five minutes. If you are unable to remain at the meeting, contact the President to request that the Board consider your comments earlier. It is the Board's policy to refer matters raised in this forum to staff for research and/or action where appropriate. The Brown Act prohibits the Board from discussing or acting upon any matter not agendaized pursuant to State Law.

5. Conduct of Business

- a. Selection of Board Officers 2014-15
- b. Adopt Resolution Authorizing the Board President to Execute a Fiscal Sponsorship Agreement with Community Partners

6. Closed Session

Public Employment Pursuant to Government Code Section 54947: Executive Director

7. Adjourn

MINUTES

SAN BRUNO COMMUNITY FOUNDATION

Regular Meeting of the Board of Directors

October 16, 2014
6:30 p.m.

**Meeting Location: San Bruno City Hall, Conference Room 115,
567 El Camino Real, San Bruno**

In compliance with the Americans with Disabilities Act, individuals requiring reasonable accommodations or appropriate alternative formats for notices, agendas, and records for this meeting should notify us 48 hours prior to meeting. Please call the City Clerk's Office 650-616-7058.

- 1. Call to Order/Welcome:** Meeting called to order by President Nancy Kraus at 6:33 p.m.
- 2. Roll Call:** Boardmembers Kraus, McGlothlin, Roberts, Cohn, Bohm, Hedley, and Stanback Stroud present.
- 3. Approval of Minutes: September 18, 2014, Regular Board Meeting:** Boardmember Hedley motioned to approve the September 18, 2014 Regular Board Meeting Minutes, seconded by Boardmember McGlothlin and approved unanimously.
- 4. Announcements:** None.
- 5. Boardmember Comments:**
 - a. President: President Kraus thanked those who attended the City Council meeting and the San Bruno Centennial Celebration in the Park. Kraus congratulated Boardmember Stanback Stroud on receiving the extremely significant honor of serving on the President's Advisory Council on Financial Capabilities for Young Americans and being appointed by President Barack Obama.
 - b. Others: None.
- 6. Consent Calendar:** All items are considered routine or implement an earlier Board action and may be enacted by one motion; there will be no separate discussion unless requested by a Boardmember, citizen, or staff.
 - a. Accept Revised Operating Norms and Policies for Board Activities
 - b. Adopt Resolution Reflecting Vision and Mission Statement of the San Bruno Community Foundation

Secretary Roberts motioned to accept the Consent Calendar, seconded by Boardmember Hedley, and approved unanimously.

7. Conduct of Business

- a. Receive Informational Presentation from City Staff Regarding City of San Bruno Ballot Measure N

City Manager Jackson presented information on the City Council's initiative that will appear on the November 4, 2014 ballot. Measure N was developed by a committee of both residents and organizations and its purpose is to help move toward revitalizing San Bruno's downtown.

8. Public Comment: Individuals are allowed three minutes, groups in attendance, five minutes. If you are unable to remain at the meeting, contact the President to request that the Board consider your comments earlier. It is the Board's policy to refer matters raised in this forum to staff for investigation and/or action where appropriate. The Brown Act prohibits the Board from discussing or acting upon any matter not agendaized pursuant to State Law.

None

9. Adjourn

Boardmember Stanback Stroud motioned to adjourn the meeting to Closed Session at 7:00 p.m., seconded by Secretary Roberts and approved unanimously. The Closed Session concluded at 9:12 p.m. with no reportable action.

Respectfully submitted for approval at the Special Board Meeting of November 22, 2014, by Secretary Emily Roberts and President Nancy Kraus.

Emily Roberts, Secretary

Nancy Kraus, President

MEMORANDUM

SAN BRUNO COMMUNITY FOUNDATION

DATE: November 22, 2014

TO: Board of Directors, San Bruno Community Foundation

FROM: Marc L. Zafferano, City Attorney

SUBJECT: Adopt Resolution Authorizing the Board President to Execute a Fiscal Sponsorship Agreement with Community Partners

The San Bruno Community Foundation (SBCF) is in the process of recruiting an Executive Director (ED). The SBCF's Bylaws provide that the ED reports to the Board.

Staff and the Board's consultants have explored various ways that the employment relationship could be structured, and this report summarizes those options.

One option would be for the ED to become an employee of the SBCF. The SBCF would then be responsible for providing the ED with all standard employee benefits, such as medical, dental, vision, life, and disability insurance, as well as the opportunity to contribute to a qualified retirement plan. The SBCF would also have to provide payroll and general human resources services to maintain the employment relationship. However, an organization with just one employee would find it difficult to obtain competitive plans and rates for health and welfare benefits, if indeed such benefits were even available in the marketplace. In addition, the SBCF does not have the staff to process payroll and perform human resources functions, and it would therefore have to contract out for those services.

A second option would be for the ED to become an employee of the City of San Bruno, with the City providing all benefits, plus the payroll and human resources functions, in exchange for an administrative fee to cover the cost of providing the services. While this could be a cost-effective solution, the ED would be required to enroll in the City's health and welfare benefit plan, as well as PERS, which are substantially more expensive than the benefits offered in the non-profit sector.

The third option would be for the SBCF to enter into a contract with an outside non-profit entity, called a fiscal sponsor, to employ the ED, provide all benefits, process the payroll, and provide necessary human resources services, in exchange for an administrative fee. This arrangement is relatively common in the non-profit world. From a legal standpoint, the ED would be an employee of the fiscal sponsor, but would still

report to the SBCF Board, as required in the Bylaws, and the Board would have final discretion and control over all employment-related decisions involving the ED.

Staff recommends that the Board consider entering into an agreement with a fiscal sponsor to employ the ED. This option provides the SBCF with the logistical support it will need to maintain the employment relationship at a reasonable cost, while allowing the SBCF to offer employment benefits commensurate with those available by other non-profits.

The Board's recruiting consultant, The 360 Group, has obtained information from several potential fiscal sponsors, and is recommending that the Board consider Community Partners to be the SBCF's fiscal sponsor for the purpose of employing the ED and any additional staff to be hired by the Board. Community Partners is headquartered in Los Angeles, but it is a well-established non-profit 501(c)(3) that acts as a fiscal sponsor for employees who work for hundreds of other non-profits in various positions, including executive directors. Community Partners is set up to offer a competitive benefits package, retirement plan, payroll, and human resources services, in exchange for a 9% fee. Staff has prepared a draft application to Community Partners, and a sample agreement is attached.

Staff recommends that the Board adopt a resolution authorizing the President to execute an agreement with Community Partners on substantially the same terms as reflected in the attached agreement, subject to review by the City Attorney.

Attachments:

1. Sample Agreement
2. Resolution



PROJECT SPONSORSHIP AGREEMENT

This Agreement is made between «First» «Last» ("Project Leader") and Community Partners®, effective «Approval_Date» ("Effective Date"). Community Partners is a California nonprofit public benefit corporation located in Los Angeles, California, qualified as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code ("IRC"). Project Leader is an individual resident of the state of _____.

The purpose of this Agreement is to clarify all arrangements and operating guidelines applicable to «Project» ("Project"), which is a specific set of charitable programs and activities described in the Proposal for Project Sponsorship previously delivered by Project Leader to Community Partners (the "Proposal"). The description of Project in the Proposal is incorporated by reference into this Agreement.

1. Project Approval and Term

a) The Community Partners Board of Directors has reviewed and approved Project as a sponsored project of Community Partners. It is agreed that Project's prospects will be enhanced by Community Partners' technical assistance and administrative expertise, and Community Partners has accepted management and control of Project because Project's activities will further the charitable and educational goals of Community Partners. Community Partners has approved establishment of a restricted fund (the "Project Fund") to receive donations and grants designated for the purposes of Project and all revenue earned by the Project and to make disbursements in support of Project. Hereinafter, the phrase "for Project" shall mean "for the purposes of Project" as described in the Proposal.

b) On the Effective Date, this Agreement shall commence and shall continue in effect unless and until terminated as provided in this Agreement.

2. Project Activities and External Communication

a) Project Leader desires to conduct Project as described in the Proposal under the management and control of Community Partners. Project will not carry out any activities inconsistent with the Proposal without the prior written permission of Community Partners.

- b) An authorized representative of Community Partners must sign any contract on behalf of Project wherein Community Partners could incur liability, legal exposure or financial obligations. Project Leader acknowledges that Community Partners will not sign any contract wherein Community Partners or Project could incur financial obligations unless there are sufficient funds in the Project Fund (or, at the option of Community Partners, Project has an executed grant agreement that will provide such funds) to cover the full amount of any such obligation. Project Leader acknowledges that Project Leader will be personally liable for any damages incurred by Community Partners as a result of Project Leader's violation of this Paragraph 2.b.
- c) Project Leader will not represent to any third party that Project Leader or any other representative of Project has the authority to bind Project or Community Partners. Project Leader acknowledges that Project Leader will be personally liable for any damages incurred by Community Partners as a result of Project Leader's violation of this Paragraph 2.c.
- d) Project will provide copies of all grant proposals and fund solicitations to Community Partners in advance of their transmission to prospective funders, with sufficient time for Community Partners to review and comment upon all such proposals and solicitations. After such materials have been approved by Community Partners, Community Partners will provide an endorsement letter to accompany the funding request, including an express disclosure of Community Partners' variance power under Paragraph 6.a. below. All resulting agreements and contracts must be signed by an authorized representative of Community Partners.
- e) Project must specify clearly, prominently and unambiguously that Project is "a project of Community Partners" on all grant proposals, applications and general fundraising solicitations, as well as all printed and/or electronic materials.
- f) If Project intends to engage in any activities that would constitute lobbying for purposes of the limitation set forth in IRC Section 501(c)(3), Project will notify Community Partners and will follow all guidelines provided by Community Partners with respect to lobbying. Project will not engage in political campaign activities of any kind whatsoever with respect to candidates for elective public office.
- g) Project Leader will notify Community Partners in advance if intending to charge a fee for any products or services other than as described in the Proposal for Project Sponsorship, so that Project and Community Partners can discuss any potential income or sales tax implications.

3. Authorized Representatives

- a) Project Leader is the only person authorized to represent Project under this Agreement. If Project Leader wishes to designate an assistant or replacement person to represent Project, any such assistant or replacement Project Leader must be approved

in writing by Community Partners in advance, and must agree to be bound by this Agreement.

b) The President & CEO of Community Partners, or his or her designee, is authorized to represent Community Partners.

4. Project Management & Advisory Board

a) All parties recognize the authority of Community Partners to exercise full managerial control over Project. The Community Partners Board of Directors has the authority of ultimate oversight over the management, supervision and control of the program, personnel and finances of Project. Therefore, the President & CEO of Community Partners will be ultimately responsible for the oversight of the day-to-day operations of Project as elaborated in the Community Partners Project Handbook (the "Project Handbook") and the Community Partners Employee Handbook. See Paragraph 11 of this Agreement regarding the Project Handbook.

b) Project has created an Advisory Board to advise and oversee the activities of the Project, subject to the ultimate direction of the Community Partners Board of Directors. The Advisory Board is a group of individuals that serves voluntarily as a subordinate body to the Community Partners Board of Directors and as an integral part of Community Partners. In matters governed by this Agreement, those participating on the Advisory Board serve as individuals only, not as representatives or agents of any funding source, employer, or any party other than Community Partners. By signing below, the Project Leader hereby confirms that all members of the Advisory Board have received a copy of and are committed to performing the role described in this Agreement.

c) Project will work with its Advisory Board to develop project goals, objectives and activities, and will review them with Community Partners' program staff prior to implementation. The Project Leader and Advisory Board will work together to achieve Project goals and objectives and will communicate routinely in writing and orally with Community Partners staff regarding Project's progress. Community Partners expects that Project Leader will be actively engaged in the actual implementation of day-to-day Project operations and that the Advisory Board will be engaged in overseeing, and will be kept fully informed by Project Leader of, such operations.

5. Personnel

Community Partners assists with recruiting, hiring, managing, and maintaining all part-time and full-time employees, as well as consultants and casual laborers. All such employees will be employees of Community Partners and are subject to the same personnel policies and benefits that are required by law to apply to all employees of Community Partners. Any such employee will be an at-will employee of Community Partners and his or her hiring and continued employment will be subject to Project

Leader raising sufficient funds to enable Project to bear the cost of salary and all benefits owing to such employee.

6. Project Finances

a) Community Partners agrees to receive and deposit funds raised for Project into the Project Fund and to disburse such funds as needed for Project's operations, and provide to Project Leader such information as may be necessary to enable Project Leader to prepare reports to Project's funding sources. Community Partners agrees to keep such books and records as may be appropriate in connection with the Project Fund. Community Partners requires that Project Leader raise sufficient funds for Project to fund the payment of all expenditures and other liabilities incurred by Community Partners on behalf of Project and that Project maintain a six-week operating reserve. Project Leader will not open or maintain any separate bank account in the name of Project. Community Partners retains the unilateral right to spend such funds so as to accomplish the purposes of Project as nearly as possible within Community Partners' sole judgment, subject to any donor-imposed restrictions on the charitable use of such assets. With regard to the choice of recipients to fulfill the purposes of Project, Community Partners retains full discretion and control over the selection process, acting completely independently of any revenue source. The parties agree that all money, and the fair market value of all property, in the Project Fund shall be reported as the income of Community Partners on its tax returns and financial statements. It is the intent of the parties that this Agreement be interpreted to provide Community Partners with variance power so that it may treat the Project Fund as Community Partners' asset in accordance with Statement No. 136 issued by the Financial Accounting Standards Board, while this Agreement is in effect.

b) In order to ensure deductibility of donations for Project, all contracts relating to Project, including grants and any other Project agreements, and all checks or other fund transfer instruments relating to Project, must be made payable to and signed in the name of: "Community Partners for [Project Name]".

7. Ownership

Any tangible or intangible property, including intellectual property such as copyrights and trademarks, whether purchased, donated, or created in connection with Project while this Agreement is in effect, will be the property of Community Partners, as the charitable party that is legally responsible for the property.

8. Administrative Share

For the performance of its fiscal sponsor services described herein, Community Partners will assess and post an administrative charge against the Project Fund. Revenues from private sources received for Project will be assessed a charge of 9% and revenues from

public sources such as government grants and contracts will be assessed a charge of 12%, subject to the right of the Community Partners Board of Directors to change such amounts at any time in its sole discretion. All administrative charges are assessed when funds are received. The parties agree that all such payments are a reasonable approximation of Community Partners' costs incurred in performing services as fiscal sponsor. Administrative charges are not refundable either during or upon termination of project sponsorship.

After 12 months under fiscal sponsorship, Project agrees to an annual minimum administrative charge of \$2,000 ("Minimum Fee"). Project agrees that in any fiscal year in which routine administrative charges, as described above, are less than Minimum Fee, Community Partners will assess Project Fund a fee to bring Project's total administrative charge for that fiscal year to the Minimum Fee. In the first fiscal year that Project is required to reach the Minimum Fee, the Minimum Fee will be pro-rated based on Effective Date of this Agreement.

Community Partners may assess the Project Fund for Project costs beyond normal services, including but not limited to additional insurance, financial, legal, and accounting charges, as provided in the Project Handbook.

9. Termination

In order to take maximum advantage of Community Partners' services, Project Leader agrees not to terminate this Agreement for at least one year from the Effective Date, provided that during such time Community Partners in its sole discretion may terminate at any time.

After completing one year of sponsorship, this Agreement will continue indefinitely until terminated. Either party may terminate this Agreement at any time thereafter by giving written notice of termination to the other party. Any such termination will be effective immediately except that, with respect to ongoing grants and Project activities, such termination will be effective only after such activities have been wound up and/or any required consents have been obtained from third parties to the satisfaction of Community Partners in its sole discretion. Any outstanding assets and liabilities in the Project Fund will be transferred upon termination as follows:

a) Termination with Successor

If the purposes of Project can still be accomplished, Project Leader may identify a successor organization that (i) has been recognized by the Internal Revenue Service as exempt under IRC Section 501(c)(3) and as not a private foundation under Section 509(a); (ii) agrees to accept the transfer of all Project assets and liabilities pursuant to the terms of a separation agreement acceptable to Community Partners; and (iii) is operating for substantially the same charitable purposes as the purposes for which Community Partners received assets for Project (such organization is referred to herein as a "Successor"). If Project incorporates as a separate entity and meets the three requirements listed in the previous sentence, it may qualify as a Successor. Subject to

the approval of the Community Partners Board of Directors and any third parties that may be required, the balance of assets in the Project Fund, together with any tangible and intangible assets (including intellectual property) and liabilities (whether then known or unknown) of Project will be transferred to the Successor upon termination.

b) Termination without a Successor

If no Successor is identified, then upon termination of this Agreement, and after payment of all Project's debts, subject to the approval of the Community Partners Board of Directors, Community Partners may transfer any remaining Project assets to a charitable or grant-making institution, or another project of Community Partners, that will commit to disbursing those funds for charitable purposes similar to those of Project, or may dispose of such assets in any manner consistent with applicable tax and charitable trust laws, subject to approval of any third parties that may be required.

10. Indemnification

Project Leader acknowledges that Project Leader will be personally liable for any damages incurred by Community Partners as a result of Project Leader's acts or omissions arising under this Agreement, as detailed in the following paragraph.

As a condition of Project sponsorship, Project Leader hereby agrees to defend, indemnify and hold harmless Community Partners, its officers, directors, trustees, employees, agents, volunteers, and members from and against any and all obligations and liabilities of Project, including any deficit in the Project Fund, and any claims, liabilities, losses and expenses (including reasonable attorneys' fees) directly, indirectly, wholly or partially arising from or in connection with any act or omission of Project Leader or his or her agents in connection with Project, (collectively, "Loss") whether before or after the termination of this Agreement.

Community Partners shall not be entitled to indemnification from Project Leader to the extent that a Loss is attributable to the gross negligence or willful misconduct of Community Partners, exclusive of all acts or omissions of Project Leader.

The provisions of this paragraph shall survive any termination of this Agreement.

11. Miscellaneous

This Agreement shall be interpreted and construed in accordance with the laws of the State of California applicable to contracts to be performed entirely within the State. Each provision of this Agreement shall be separately enforceable, and the invalidity of one provision shall not affect the validity or enforceability of any other provision. Nothing in this Agreement shall be construed as giving any person other than the parties, any right, remedy, or claim under or in respect of this Agreement or any provision hereof. This Agreement shall not be deemed to create any relationship of agency, partnership, or joint venture between the parties hereto, and neither party shall represent to anyone that any such relationship exists. In the event of any controversy,

claim, or dispute between the parties arising out of or related to this Agreement, or the alleged breach thereof, the prevailing party shall, in addition to any other relief, be entitled to recover its reasonable attorneys' fees and costs of sustaining its position. The failure of Community Partners to exercise any of its rights under this Agreement shall not be deemed a waiver of such rights. For the purpose of any action or proceeding arising out of or relating to this Agreement, each party to this Agreement irrevocably (a) submits to the exclusive jurisdiction of the state courts of California and to the jurisdiction of the United States District Court for the Central District of California and (b) agrees that all claims in respect of such action or proceeding shall be heard and determined exclusively in any California state or federal court sitting in the County of Los Angeles.

12. Entire Agreement

This Agreement constitutes the only agreement, and supersedes all prior memoranda and understandings, both written and oral, among the parties with respect to the subject matter hereof. All exhibits hereto are a material part of this Agreement and are incorporated by reference. This Agreement, including any exhibits hereto, may not be amended or modified, except in writing signed by all parties to this Agreement.

In signing this Agreement, Project Leader indicates that s/he has received and read the Project Handbook and all the duties and responsibilities of the project and Project Leader being incorporated herein. Project Leader also agrees to abide by all project operating policies and procedures of Community Partners as set forth in the Project Handbook, the terms of which are incorporated by reference into this Agreement, as such may be amended from time to time in the sole discretion of Community Partners with reasonable notice to Project Leader, provided that in the event of a conflict between this Agreement and the Project Handbook, this Agreement shall take precedence.

IN WITNESS WHEREOF, and without reservation, the parties execute this Project Sponsorship Agreement.

Dated: _____

Paul J. Vandeventer
President & CEO
Community Partners

Dated: _____

«First» «Last»
Project Leader
«Project»

RESOLUTION No. 2014 - __

**RESOLUTION OF THE SAN BRUNO COMMUNITY FOUNDATION
AUTHORIZING THE BOARD PRESIDENT TO EXECUTE A FISCAL SPONSORSHIP
AGREEMENT WITH COMMUNITY PARTNERS**

WHEREAS, the SBCF desires to retain an Executive Director, and possibly other employees in the future; and

WHEREAS, the SBCF is not at this time able to provide the logistical support necessary to maintain employees or offer benefits commensurate with those available in the industry; and

WHEREAS, the SBCF has determined that Community Partners, a non-profit entity, would be an appropriate fiscal sponsor to provide these services and benefits;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors authorizes the President of the Board to execute a fiscal sponsorship agreement with Community Partners in substantially the same form as Attachment 1 to the accompanying staff report, subject to final approval by the City Attorney.

Dated: November 22, 2014

ATTEST:

Emily Roberts, Secretary

I, Emily Roberts, Secretary, do hereby certify that the foregoing Resolution No. 2014-__ was duly and regularly passed and adopted by the Board of Directors of the San Bruno Community Foundation on this 22nd day of November, 2014, by the following vote:

AYES: Boardmembers:

NOES: Boardmembers:

ABSENT: Boardmembers: